

MULTIMEDIA



UNIVERSITY

STUDENT ID NO

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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2018/2019

UCV4622 – CIVIL PROCEDURE II

(All Sections / Groups)

04 MARCH 2019

Reading Time: 2.30PM-2.45PM

(15 Minutes)

Answering Time: 2.45PM-5.45PM

(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of **5** pages with **5** Questions only.
3. This paper consists of two parts. **PART A** is **COMPULSORY**. **PART B** to attempt **either question 4 (a) or 4 (b)**. The distribution of the marks for each question is given.
4. Students are only allowed to bring in **CLEAN AND ORIGINAL COPY** of Rules of Court 2012 into the exam venue. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.
5. Please write all your answers in the Answer Booklet provided.

PART A: COMPULSORY**QUESTION 1**

- (a) Kassim Selamat wishes to claim against Tiga Abdul Bank (TAB) for breach of contract. Kassim Selamat claims that on 6 December 2018, he caused a cheque No.502452 ('Rimau Cheque') for the sum of RM 500,000 payable to him to be deposited with TAB branch in Seremban. The Rimau cheque should be cleared within two days from 6 December 2018 or thereabout and that the said sum of RM500,000 should have been credited into Kassim Selamat's account. The Rimau cheque was only cleared on 13 December 2018. Kassim Selamat having no knowledge of the status of Rimau cheque, had on 10 December 2018, issue a cheque No.191727 ('Singa Cheque') for the sum of RM100,000 payable to Labu bin Kundur. When the Singa cheque was presented to TAB on the same day it was dishonoured and was endorsed with the words 'insufficient funds' by TAB. Kassim Selamat claims she suffered loss and damage and much anxiety as result of the above.

Draft the proper pleading for Kassim Selamat.

(15 marks)

- (b) The Plaintiff entered into a Consortium Agreement with the Defendant to form a consortium with a sole purpose of securing a turnkey project to be tendered out by one famous company in Sarawak. The Plaintiff alleged that the Defendant had breached the Consortium Agreement by submitting a separate tender on an individual basis for the same project. The Plaintiff subsequently commenced an action against the Defendant on 15 January 2018. On 26 February 2018, the pleadings were deemed closed. The Plaintiff filed its notice for pre-trial case management on 5 March 2018. Despite of that, on 5 April 2018, the Defendant filed its application for striking out the writ and statement of claim pursuant to O 18 r 19 of the Rules of Court 2012 ('the ROC'). The Senior Assistant Registrar allowed the application. The Plaintiff appealed.

State the nature of the application and discuss the principles governing such application.

(10 marks)

Total: 25 marks

Continued...

QUESTION 2

- (a) Prof. Aziz has written a book entitled “Civil Litigation for Dummies” which has been sold to bookshops all over Malaysia. Subsequently, he found several copies of a book entitled “Civil Litigation- The Easy Way” (‘Easy’) also on sale in which the contents were very much similar to his book. He investigated and found that the Dr. Ghazali was responsible for publishing and distributing the copies to the bookshops. Prof. Aziz then brought an action against Dr. Ghazali for breach of copyright and for an injunction to restrain Dr. Ghazali from publishing the “Civil Litigation- The Easy Way”. Prof. Aziz also had information that Dr. Ghazali has obtained a large sum of money from the sale of Easy which he deposited the money into his account in Mari-Mari Bank, Kuala Lumpur. He also found out that a printing company had delivered about 180 newly print copies of Easy for sale.

Advise Prof. Aziz on the above issues.

(13 marks)

- (b) “An application for injunction is not a separate cause of action.”

Explain.

(6 marks)

- (c) Briefly explain the difference between Bullock Orders and Anton Pillar Orders.

(6 marks)

(Total: 25 marks)

Continued....

QUESTION 3

- (a) On 1 March 2014, Janna's claim against her ex-husband has successfully allowed by the Seremban High Court. Nicolas, the Defendant has been ordered by the court to pay an amount of RM145,000 being a compensation together with cost and interest. However, on 1 March 2019, Janna came to your firm, telling you that she has yet to receive any single cent from Nicolas. She also came to know that Nicolas has bought a new car, Mitsubishi Outlander 2.0 cc under his name. Previously, Nicolas also own another car, Honda CRV 2.4 cc jointly bought under him and his new wife's name. Janna informed you that Nicolas already sold his house with purchase price of RM2.1 million and now is staying with his mother, Datin Sally in her house. She heard that Nicolas also bought a new house but it is registered under his wife's name. Janna also claimed that recently Nicolas has been promoted to Senior Engineer in Megah Sdn.Bhd. and the salary is quite competitive. In addition to that, Janna also aware on Nicolas saving amounted to RM100,000 in Bank Simpanan Nasional and RM100,000 in Employment Provident Fund (EPF).

Advise Janna on any possible actions that can be taken against Nicolas in order to get her money and explain to her the procedures?

(15 marks)

- (b) Plaintiff has filed his claim against Defendant at the Sessions Court Temerloh vide Civil Case No: 53-256-18 for compensation and damages as a result of an accident at KM 13, Jalan Temerloh - Jerantut on 28 December 2017 involving Plaintiff's vehicle and the Defendant's vehicle. At the trial of the said civil suit on 27 March 2018, Plaintiff had called 8 witnesses and on 29 March 2018 Defendant had also called his witness and closed his case. The case was adjourned to enable the parties to submit their written submissions before the learned Sessions Court Judge to make her decision. After numerous adjournments, finally the learned Sessions Court Judge gave her decision on 20 June 2018 where she apportioned the liability 70% on Plaintiff and 30% on Defendant. Defendant intends to appeal against the decision of the Sessions Court Judge.

Advise Defendant on the following:-

- (i) the procedure for the appeal.

(4 marks)

- (ii) whether Defendant may adduce fresh evidence at the appeal stage.

(6 marks)

(Total: 25 marks)

Continued...

PART B: ANSWER EITHER QUESTION 4 (a) OR QUESTION 4 (b)**QUESTION 4 (a)**

(i) Write a short explanation on the term below:

- a) Discovery; and
- b) Interrogatories.

(4 marks each x 2)

(ii) "The practice which has been laid down amounts to no more than a direction to the judge to put counsel who desires to make a submission of no case to his election, and to refuse to rule unless counsel elects to call no evidence. Where counsel has so elected he is, of course, bound; but if for any reason, be it through oversight or (as here) a misapprehension as to the nature of counsel's argument, the Judge does not put counsel to his election, and no election in fact takes place, counsel is entitled to call his evidence just as if he had never made the submission."

As per Lord Greene M.R in *Yuill v Yuill* [1945] P. 15

With reference to the above matter and other case law, analyze the application of doctrine of submission of no case to answer in Malaysia.

(8 marks)

(iii) The Plaintiff was the co-owner of a piece of land in Sandakan ('the said land'). Pursuant to the terms of a deed dated 28 July 2016 ('the deed'), the Plaintiff transferred the said land to the First Defendant ('D1') for development. Under cl 4 of the deed, the land owner (Plaintiff) agreed to allow the Developer (first Defendant) a period of six months to obtain approval from the relevant authorities for the development of the Phase 1 project. The other Defendants were the guarantors. The First Defendant only applied for permission to commence building works about one and a half years after expiry of the six month period stated in clause 4 of the deed and failed to develop the said land. Consequently, the Plaintiff sued the Defendants for breach of contract. Upon the Defendant's defence, the Plaintiff raises preliminary questions of law before the Judge.

Advise the Defendants on the nature of the Plaintiff's application.

(9 marks)

(Total: 25 marks)

OR

Continued....

QUESTION 4 (b)

- (i) “In the absence of any express conditions regarding the inclusion of any of the documents in the agreed bundle of documents, speaking for myself, I have always taken the agreed bundle in a civil case to mean as follows without meeting any contradiction or any serious contradiction from any member of the Bar or an appellate court in my decades at the Bar or on the Bench”.

As per Peh Swee Chin FCJ in *Jaafar bin Shaari & Anor (Suing as administrators of the estate of Shofiah Bte Ahmad, deceased) v Tan Lip Eng & Anor* [1997] 3 MLJ 693.

Discuss the above statement.

(7 marks)

- (ii) The Plaintiffs' claim for RM30,904 being advance made to the Defendant was denied by the Defendant. At the hearing, the Plaintiffs' representative was present together with their counsel. The Defendant was absent but his counsel was present. Thereafter, on the oral application of the Plaintiffs' counsel, the learned Magistrate gave judgment in favour of the Plaintiffs. Defendant wish to set aside the judgment given by the learned Magistrate.

Advise the Defendant.

(9 marks)

- (9) The Plaintiff claimed against the Defendants for a sum of RM2 million being the balance of monies due and owing pursuant to a letter of undertaking given by the Defendants. The Plaintiff sought for the directions of the court under O 35 r 4(1) of the Rules of Court 2012 (ROC 2012) that the Defendants begin by opening their case as the burden of proof of the issues lies on the Defendants. It was submitted that the Defendants should begin by opening their case by virtue of O 35 r 4(6) of the ROC 2012.

Discuss the issue above.

(9 marks)

(Total: 25 marks)

End of Page